IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1203 OF 2000

Chatur Dinkar Sarang. ...Petitioner
V/s.
State of Maharashtra & Anr. ...Respondents

Mr.M.K. Kocharekar for Petitioner.
Ms.Rajeshree M. Gadhavi, APP for the State.

CORAM : V.M. KANADE, J.

DATED : JANUARY 24, 2006

P.C. :-

. Heard learned Counsel for the petitioner. none appears on behalf of respondent though they are served.

. There was a dispute between the petitioner and the respondent who are real brothers in respect of a room which was initially owned by their parents and after their parents expired, the said property was divided between the brothers by virtue of a document which was executed by their mother before her death. The proceedings were initiated under the provisions of Section 145(1) of the Cr.P.C. and the notices were accordingly issued by the Special Executive Magistrate. After the order was passed under Section 145(1), the

petitioner filed the reply alleging that the said property was a joint family property and there was partition to be effected pursuant to the desire of their old mother as expressed by her in a document which was executed in the presence of both the parties. Considering the said documentary evidence, the learned Additional Chief Metropolitan Magistrate was pleased to dismiss the proceedings which were initiated by him pursuant to the powers vested with him under Section 145(5) of the Cr.P.C. Against the said order, the respondent herein preferred Criminal Revision Application before the learned Sessions Court for Greater Bombay. The Sessions Judge allowed the revision application and set aside the order of Metropolitan Magistrate and remanded the matter back for hearing. Against the said order, the present Criminal Application has been preferred.

2. It is submitted that the Revisional Court had clearly erred in interfering the order passed by the Metropolitan Magistrate when there was no illegality or irregularity committed by the Magistrate in passing the

said order.

3. I have perused the impugned order passed by the Sessions Court and also a reasoned order passed by the Additional Chief Metropolitan Magistrate. Accordingly, there was no reason for Sessions Court to interfere with the order passed by the Metropolitan Magistrate. There was sufficient evidence on record to indicate that the property initially belonged to the father of the present applicant and respondent no.2 and after his death, his mother had become the owner of said rooms and after her death, the property was jointly owned by two brothers and partition was to be effected according to the documents which were executed by their mother. Under these circumstances, there was no reason for the Sessions Court to interfere with the order which was passed by the Magistrate who had exercised his discretion which was vested in him under Section 145(5) of the Cr.P.C. It was open for the respondent to have instituted a civil suit claiming a disputed property and could have claimed interim orders from the civil Court even after the proceedings were dropped by the

Metropolitan Magistrate. Under the circumstances, in my view, the order of the Sessions Court is liable to be quashed and the order passed by the Chief Additional Metropolitan Magistrate will have to be confirmed.

4. In the result, the Criminal Application is allowed. The impugned order passed by the Additional Sessions Court in Criminal Application No.439/97 is set aside. Rule is made absolute in the above terms.

(V.M. KANADE, J.)